



### BACKGROUND

On February 27, 1997, Sugar River Education Association, NEA-New Hampshire (Association) filed unfair labor practice charges alleging that the Claremont School District (District) violated RSA 273-A:5 I (e), and (h) when it submitted teachers' salary increases to the voters in a separate warrant article from the school budget warrant article. On March 14, 1997, the School District filed its answer and a petition for declaratory judgment. A hearing was held before the PELRB on April 3, 1997 and the record was held open for the receipt of evidence. The record was closed on April 17, 1997.

### FINDINGS OF FACT

1. The Claremont School District employs teachers and other personnel in the operation of its schools and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Sugar River Education Association, NEA-New Hampshire is the duly certified bargaining agent for teachers who are employed by the School District.
3. The School District and the Association are parties to a collective bargaining agreement (CBA) for the period July 1, 1993, through June 30, 1996, which was extended through June 30, 1997.
4. Article 10.5 of the aforementioned CBA reads, "The Parties mutually agree that any increases in teachers' salaries from one year to the next will not be filed as a separate warrant article but will be included as part of the total budget warrant." This language has been included in several prior CBAs and the language has been honored. (Association Exhibit No. 1.) A single warrant article has been used to appropriate the first year's costs and a note has explained the appropriations to be voted in the subsequent years of multi-year CBAs.
5. The Supreme Court has said that approval of multi-year contracts will be legal and binding for the whole term of the CBA when voters have been given full knowledge of the financial terms of the collec-

tive bargaining agreement. Appeal of Sanborn Regional School Board, 133 NH 513, 520 (1990). Inclusion in the warrant of language that would apprise voters of the financial consequences of their actions will be sufficient. At the same time, the Court has stated that it did not mean to say that there is no alternative mechanism to warrant inclusion to sufficiently apprise voters. However, in the absence of evidence in the record establishing that the voters had knowledge of the financial terms relating to all three years of a collective bargaining agreement, the District is not bound to fund the second and third-year terms of the agreement. Id. at 522.

6. In 1995, Senate Bill 2 was enacted into law. It was encoded as RSA Chapter 40 which allows a town to adopt the use of an official ballot as was done by Claremont in November, 1996. RSA 40:13 XI prescribes that "[T]he wording of the article on the operating budget shall be as follows:

'Shall the (local political subdivision) raise and appropriate as an operating budget, not including appropriations for special warrant articles, the amounts set forth on the budget posted with the warrant, for the purposes set forth therein, totaling \$\_\_\_\_\_? Should this article be defeated, the operating budget shall be \$\_\_\_\_\_, which is the same as last year, with certain adjustments required by previous action of the (local political subdivision) or by law or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only.'

7. In May, 1996, the School District and the Association began negotiations for a multi-year contract. They had reached the issue of salaries but were far apart. Impasse was declared in September. Mediation commenced in December, 1996.
8. At mediation sessions, School Board members discussed the new question of how to word the budget warrant

article which had been raised with the adoption by Claremont in 1996 of the official ballot of Senate Bill 2. (District Exhibit No. 1) The question was not addressed in the presence of Association representatives and a change to Article 10.5 was not raised during negotiations, though School Board members were considering the implications of the mandatory warrant article language.

9. The District and the Association negotiated a three year CBA for the period, July 1, 1997, through June 30, 2000. On January 10, 1997, Association secretary, Robert Young learned of the School Board's intention to offer the costs for the new CBA in a separate warrant article from the operating budget. District Business Administrator Allen Damren favored the use of two articles. Young and School Board Chairman, Candy Crawford agreed to submit the legal question of warrant article wording to their respective attorneys.
10. Attorneys Allmendinger, Hatfield and Bradley agreed that, despite Senate Bill 2's wording requirement for budget submission, a single warrant article could be drawn and submitted to the voters as had been done in the past. They so advised the School Board in a letter to Superintendent Patterson dated February 12, 1997. (Unfair Labor Practice Charge, Appendix 8-14.)
11. Despite the advice of the attorneys, the School Board employed two warrant articles. The Board chose to submit the school operating budget to the voters in one warrant article and to submit the costs of the new CBA to the voters in a separate warrant article. A warrant article employing the format prescribed in RSA 40:13 XI, (Finding No. 6), was used for the approval of the total operating budget and a "special" warrant article which enumerated the amounts to be appropriated for each of the three years was prepared for the school warrant (Association Exhibit No. 2).
12. Two publications in circulation contemporaneous to the preparation of the 1997 school warrant were taken into evidence though they were not subjects of testimony. The New Hampshire Department of Revenue Administration issued a publication on February 13, 1996, entitled

"Questions and Answers Regarding SB 2." The New Hampshire Municipal Association issued "How to Make SB 2 Work," an undated publication which is internally dated as having been prepared prior to the 1997 town meeting season. Both advise that a multi-year collective bargaining agreement not be presented for voter approval as part of the "operating budget" warrant article.

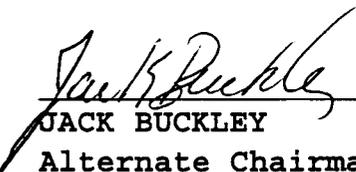
DECISION AND ORDER

The parties had bargained the method for submitting a new CBA's costs to the voters. This was the subject of Article 10.5 of the prior CBA. Despite the passage of Senate Bill 2, Article 10.5 was not renegotiated. The agreement to include new CBA costs in the total budget warrant always had been honored and the wording of the article always had been drafted to meet the requirements of the law. (Finding No. 5). Nothing in Senate Bill 2 requires separate warrant articles or in any way forbids inclusions of various appropriations in a single warrant article explained with the use of footnotes or similar accommodations. Indeed, the thrust of Senate Bill No. 2 seems to be simplification of process achieved by decreasing the number of separate warrant articles requiring appropriations. CBA Article 10.5 is in harmony with that purpose.

No answer has been supplied as to why the School Board has ignored the advice of all counsel to present the new CBA in one warrant article. The School Board's action contrary to Article 10.5 of the CBA constitutes a breach of contract and violations of RSA 273-A:5 I (a), (e) and (h). The School Board is to CEASE and DESIST in this action and shall honor the agreement contained in Article 10.5 when presenting a CBA to the legislative body.

So ordered.

Signed this 23rd day of July, 1997.

  
 JACK BUCKLEY  
 Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members E. Vincent Hall and Seymour Osman present and voting.